

AG Contract No KR00-0272TRN
ADOT ECS File No JPA 00-19
Project No.: CM-GIL-0(7)P (8)
TRACS No.: SS 434 01C
Project. Gilbert & Ray Roads to
Recker & Guadalupe Roads

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
THE TOWN OF GILBERT

THIS AGREEMENT is entered into 30 June, 2000, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the TOWN OF GILBERT, acting by and through its MAYOR and TOWN COUNCIL (the "Town").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 28-334 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.
2. The Town is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Town.
3. Congress has authorized appropriations for, but not limited to, transportation enhancements including roadside attractions of historic preservation.
4. Such project within the boundary of the Town has been selected by the Town; the survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration (FHWA) for its approval.
5. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the Town by reason of federal law and regulations under which funds for the project are authorized to be expended.

NO 24080
Filed with the Secretary of State
Date Filed: 06/30/00
Retrey Gayles
Secretary of State

By Wicky V. Hearnwood

6 The Town, in order to obtain federal funds for the construction of the project, is willing to provide Town funds to match federal funds in the ratio required or as finally fixed and determined by the Town and FHWA, including actual construction engineering and administration costs (CE).

7 The work embraced in this agreement, to be administered by the Town, and the estimated costs are as follows: Construct Advance Traffic Management System.

Estimated Project Cost (No CE cost)	\$1,267,585 00
Surcharge @ 5%	\$ 63,379 00
Subtotal	\$1,330,964 00
Federal Aid Funds @ 94.3% of \$854,401.00 (CAP) (FY00)	\$ 805,700 00
Federal Aid Funds @ 94.3% of \$400,000 00 (CAP) (FY01)	\$ 377,200 00
Subtotal Federal Aid	\$1,182,900 00
Town Funds @ 5.7% of \$854,401.00	\$ 48,701 00
Town Funds @ 5.7% of \$400,000 00	\$ 22,800 00
Local Funds @ 100% (non-Fed.-Aid)	\$ 76,563 00
Total Town Funds	\$ 148,064 00

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction, the Town will and does hereby designate the State as authorized agent for the Town. The State hereby agrees to be authorized agent for the Town, and with the aid and consent of the Town and the FHWA, will proceed to advertise for, receive and open bids, and subject to the concurrence of the Town and FHWA, enter into a contract(s) with a firm(s) on behalf of the Town to whom the award is made for the construction of the project. Such project to be performed, completed, accepted and paid for in accordance with the instructions and requirements of the Town and the Standard Specifications for Road and Bridge Construction of the Arizona Department of Transportation. The State will enter into a Project Agreement with FHWA on behalf of the Town covering the work embraced in said construction contract and will request the maximum federal funds available, including construction engineering and administration costs. Should costs exceed the maximum federal funds available, it is understood and agreed that the Town will be responsible for any overage.

b. Should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the Town shall be obligated to incur and will pay for said increased costs.

2. Prior to the solicitation of bids, the Town shall deposit sufficient funds with the State in the amount determined to be necessary to match federal funds in the ratio required.

3. The Town shall acquire, the necessary right of way and hereby certifies that all necessary rights of way have been or will be acquired prior to advertisement for bid.

4. The Town shall remove from the proposed right of way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been or will be removed therefrom, prior to the start of construction.

5. The Town shall not permit or allow any encroachments, except those authorized by permit, upon or private use of, the right of way associated with the Project. In the event of any unauthorized encroachment or improper use, the Town shall take all necessary steps to remove or prevent any such encroachment or use.

6. Upon completion of construction, the Town shall provide for, at its own costs and as an annual item in its budget, proper maintenance, including, but not limited to, signs and markings necessary for the purpose of regulating, warning and guiding traffic, all in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.

7. The Town will provide personnel to administer and supervise construction. The FHWA will participate in the cost of construction supervision provided by the Town at the pro rata established in the Project Agreement for up to 15 percent of the cost of construction. Construction supervision costs not participated in by FHWA shall be borne by the Town. All construction project change orders are to be copied to the State.

8. The Town will complete the project in accordance with approved plans and specifications and the requirements of the relevant State and federal statutes, rules, or regulations. In the event the Town fails to comply with the plans, specifications or any relevant State or federal statutes, rules, or regulations, the Town shall hold the State harmless from any claims or costs incurred by the State as a result of the Town's failure to comply.

9. State employees may perform any inspections of the project or audit any books or records of the Town in order for the State to satisfy itself that the monies on the project have been spent and the project completed in accordance with the plans and specifications, statutes, rules, and regulations of the State and federal government.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement. The Town assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the Town and that the Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the Town, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation or attorneys' fees.

2. The cost of the construction and construction engineering work covered by this agreement is to be borne by FHWA and Town, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, Town agrees to furnish and provide the difference between the total cost of the work provided for in this agreement and the amount of federal aid received

3. *It is understood and agreed, the Town will be responsible for the payment of contract amount for fiscal year 2001 if the budgeted federal fund is not forth coming from the Federal Highway Administration.*

4. *It is understood and agreed, the Town will not ask for any additional funds in each of the fiscal years 2000 and 2001*

5. This agreement shall remain in force and effect until completion of the work; provided, however, that any provisions in this agreement for maintenance shall be perpetual, unless assumed by another entity

6. This agreement shall become effective upon filing with the Secretary of State

7. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

8. The provisions of Arizona Revised Statutes Section 35-214 pertaining to State audit are applicable to this contract. In the event of such an audit the Town will bear all costs associated therewith

9. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

10. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Department of Transportation
Joint Project Administration
205 S. 17th Avenue - 616E
Phoenix, AZ 85007

Town of Gilbert
Engineering Department
1025 S. Gilbert Road
Gilbert, AZ 85296

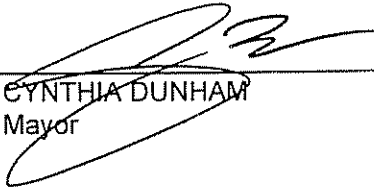
11. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

TOWN of GILBERT

STATE OF ARIZONA
Department of Transportation

By


CYNTHIA DUNHAM
Mayor

By


CATHERINE J. HEGEL
Contract Administrator

ATTEST:

By

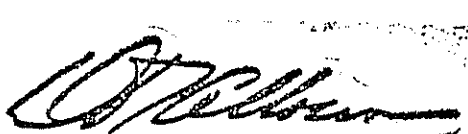

CATHY TEMPLETON
Town Clerk

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18May2000

RESOLUTION

BE IT RESOLVED on this 8th day of February 2000, that I, the undersigned MARY E. PETERS, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Intermodal Transportation Division, to enter into an agreement with the Town of Gilbert for the purpose of defining responsibilities for the acquisition of federal funds for the use and benefit of the Town for Gilbert and Ray Roads to Recker and Guadalupe Roads Project.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Contractor Administrator for approval and execution.

A handwritten signature in black ink, appearing to read 'D. Allocco', is written over a horizontal line.

DAVID R. ALLOCCO, P.E.
Assistant State Engineer
Engineering Technical Group

for MARY E. PETERS, Director

RESOLUTION NO. 2155

A RESOLUTION OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF GILBERT AND THE ARIZONA DEPARTMENT OF TRANSPORTATION RELATED TO THE CONSTRUCTION OF AN ADVANCE TRAFFICE MANAGEMENT SYSTEM.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the Town of Gilbert, Arizona, determining that it is in the best interest of the Town of Gilbert, Arizona, to enter into an Intergovernmental Agreement with the State of Arizona, Department of Transportation, for the purpose of defining responsibilities for the acquisition of Federal Funds for the use and benefit of the Town of Gilbert and the Ray Road to Recker and Guadalupe Roads Project and authorizing and directing the Mayor to execute the Agreement and any necessary related documents.


PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA THIS 6th DAY OF June, 2000.


Cynthia L. Dunham, Mayor

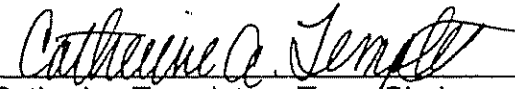
ATTEST:


Catherine A. Templeton, Town Clerk

APPROVE AS TO FORM:


Martinez & Curtis, P.C.
Town Attorneys
By: Susan D. Goodwin

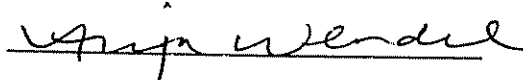
I hereby certify the above foregoing Resolution No. 2155 was duly passed by the Council of the Town of Gilbert, Arizona, at a regular meeting held on June 6, 2000, and that quorum was present thereat and that the vote thereon was 6 ayes and 0 nays and 0 abstentions. 1 Council members were absent or excused.


Catherine Templeton, Town Clerk
Town of Gilbert

APPROVAL OF THE TOWN OF GILBERT ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the TOWN OF GILBERT and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 6 day of June, 2000.


Town Attorney



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX, AZ 85007-2926

JANET NAPOLITANO
ATTORNEY GENERAL

TRN Main: (602) 542-1680

Direct: (602) 542-8855

Fax: (602) 542-3646

MAIN PHONE: (602) 542-5025

FACSIMILE: (602) 542-4085

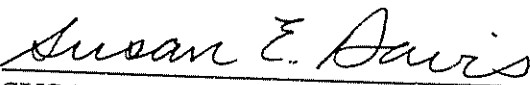
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR00-0272TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED: June 26, 2000.

JANET NAPOLITANO
Attorney General



SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:ggt

Enc.

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